

FULL COURT PRESS

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A SECURITIES REGULATION,  
LITIGATION, AND  
ENFORCEMENT HANDBOOK

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PAUL C. SAUNDERS

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## **What Others Are Saying About *A Securities Regulation, Litigation, and Enforcement Handbook***

Paul Saunders has written the most readable handbook I have come across in my many years of law practice, judging, and law school teaching. He has taken a difficult and dense subject and made it understandable to all levels of readers—law students, practitioners, and interested non-lawyers. The sprinkling of questions throughout the book are thought provoking and tantalizing. I constantly thought “how would I answer that.” His writing style is clear, crisp, and concise. Believe it or not, I couldn’t put it down. As good a read as the best novels, biographies, or history books that I so enjoy. I highly recommend its use in classrooms, law libraries, and personal bookshelves. If you want to understand the securities markets—this is your best choice.—Hon. Shira A. Scheindlin, United States District Judge (Ret.), Fellow, College of Commercial Arbitrators, Of Counsel, Stroock & Stroock & Lavan, LLP

Paul Saunders’ *A Securities Regulation, Litigation, and Enforcement Handbook* is a welcome addition to a very crowded field. It is written in a succinct, and non-technical style. In particular, key cases are presented with careful attention to procedural context that then shapes how holdings are framed and understood. By providing a close reading of regulations and cases, Mr. Saunders is able to state applicable principles clearly without sacrificing nuance or understating gray areas, which are consistently and precisely highlighted. This will be a wonderful resource for anyone striving to provide nuanced advice or formulate litigation strategy.—Owen C. Pell, Retired Partner Of Counsel, White & Case LLP

Paul Saunders would be on any list of all-time greats of securities litigators. In this magnum opus, he distills a half century of experience into a comprehensive treatment of that subject. It is remarkable how clear he can be, even as he captured the nuances that many would miss. Every serious student of securities law will want this book.—John Sexton, Benjamin Butler Professor, Dean Emeritus, and President Emeritus at NYU

In addition to being a mentor and friend, Paul is one of the finest securities litigators of his generation. He is one of the few litigators ever to take multiple

securities cases to trial, and he has been deeply involved in the development of the law in this area for nearly fifty years. This book condenses his decades of practicing and teaching securities litigation at the very highest levels into a detailed, comprehensive compendium of knowledge. Written in Paul's trademark approachable style, this is both a practical and scholarly guide that will be invaluable to practitioners, clients and students alike.—Timothy Cameron, Partner, Cravath, Swaine & Moore LLP

This book hits the sweet spot for practitioners and students who want to understand the fundamentals of securities law with enough sophistication to appreciate why this is such a deep, challenging, and fascinating subject, and then put that knowledge to practical use.—Donald Langevoort, Thomas Aquinas Reynolds Professor of Law, Georgetown University Law Center

In addition to its thorough discussion of the law of securities regulation and securities enforcement, this handbook provides a useful roadmap through the ways and means of litigation, written by a practitioner who has spent many years trying cases as well as many years in the classroom. To that extent, it is different from the ordinary casebook or textbook and combines a scholarly discussion of securities laws with the practical perspective of a litigator. For that reason, it should become a valuable addition to the lawyer's library.—Robert Haig, Partner, Kelley Drye & Warren LLP

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Paul C. Saunders

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*To Pat,  
our sons Paul Jr. and Mike,  
and our grandchildren Tatum, Erin, Will, Henry, and Ruby*





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# Preface

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This Handbook had its creation when I began teaching Securities Litigation and Enforcement at Georgetown University Law Center many years ago and had a second birth more recently when I began teaching Securities Regulation at the Elisabeth Haub School of Law at Pace University. But the real genesis of this handbook was in my decades of practicing law. I began my legal career as an Army JAG lawyer in Korea and Washington DC, where I tried and appealed general courts-martial. I then joined the firm of Cravath, Swaine & Moore, LLP, where I spent the rest of my career as a trial lawyer. As it happened, many of my trials, including jury trials, involved the securities laws. I was fortunate to have tried many securities cases before very good federal judges who knew the law and made certain that I did as well.

As a result, this Handbook is a bit different from a traditional casebook or law textbook. It contains and represents the reflections of a trial lawyer who is, somewhat by happenstance, also a law professor. The question that is presented, time and time again in the classroom and the courtroom, is “what would you do under these circumstances?” As trial lawyers and law students well know, that is an easy question to ask, but a difficult one to answer. I hope that this Handbook will help the readers answer that question whenever it is posed.

The purchase and sale of securities is at the center of our economic system. But for far too long it was unregulated and exploited by unscrupulous robber barons who took advantage of the naïveté of investors to make millions. Prior to the stock market crash of 1929 and the Great Depression, there were no federal securities laws, only state “blue sky” laws that were largely ineffective. Investors were encouraged to buy stocks “on margin” without having any idea what they were buying. After a comprehensive investigation, Congress adopted the Securities Act of 1933 on the eve of President Franklin Roosevelt’s inauguration in order to require corporations that were issuing securities to provide full and truthful disclosure about what they were selling. A year later, the Securities Exchange Act of 1934 was enacted to regulate the securities exchanges and to prohibit deceptive devices and contrivances in connection with the purchase and sale of securities.

In the decades that followed, the federal securities laws became the most important federal vehicle we have for prohibiting fraud in the purchase and sale of securities and for insuring that investors are told the whole truth about what they are buying and selling. This is a tall order, and the resulting statutes, rules, and regulations are often complex, opaque, and sometimes even unintelligible. One of the objectives of this Handbook is to simplify the federal securities laws and to remove some of their opaqueness. But its more important objective is to assist lawyers in advising their clients about the purposes and consequences of the federal securities laws, thereby assisting them in delivering the rule of law to those who they represent. It is my hope that, in doing so, they will reflect and enhance the essential values of our shared honorable profession.

January 2022

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I would like to acknowledge three groups of colleagues and friends who helped me write this Handbook. First and foremost were my students, who asked the right questions and who helped me shape the right answers. Second, my colleagues at the Cravath firm kept my work on the straight and narrow and never failed to give me help when I asked for it. I single out LizAnn Eisen, Steve Burns, Dave Stuart, Tim Cameron, Dan Slifkin, and Kimberley Drexler for special thanks. Third, I would like to acknowledge and thank the many scholars whose works on the U.S. securities laws I have studied and used for many years. In particular, I thank my friends and colleagues at Georgetown Law, Professors Don Langevoort and Christopher Brummer, whose works I have respected and relied upon, and my colleague at the Haub School of Law at Pace University, Associate Dean Jill Gross. I would also include in this category six law professors I have never met, Professor Steven Choi at NYU Law, Professor Adam Pritchard at Michigan Law, Professor Donna Nagy at the Maurer School of Law at Indiana University, Professor Richard Painter at the University of Minnesota Law School, Professor Margaret Sachs at the University of Georgia Law School, and Professor Marc Steinberg at the Southern Methodist Law School, all of whose works I have studied and used extensively in my courses and in this Handbook.

My thanks to all.

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Securities law is undeniably central to our economy and livelihood, but for many the law can be arcane and opaque. This handbook, written by a litigator who has taught securities law at two law schools, as well as at the Securities and Exchange Commission, will help to lead practitioners, law professors, law students, and even those not schooled in the law, through the maze of American securities. This handy reference text includes guidance on the registration of securities and public offerings, civil and criminal liability, the prohibition of market manipulation and insider trading, as well as the intricacies of securities litigation, class actions, and the arbitration of securities disputes. Among other subjects, it also covers the Foreign Corrupt Practices Act and the current attempts to regulate the sale of cryptocurrencies as securities.

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